



A handwritten signature in black ink, appearing to read "Michael S. McManus".

Hon. Michael S. McManus
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re)	Case No. 09-52788
)	
MICHAEL and SHELLEY HART,)	Chapter 13
)	
Debtor.)	Date: December 18, 2009
)	Time: 1:30 p.m.
)	
)	

MEMORANDUM

Movant Bank of America Mortgage Capital Corporation seeks relief from the automatic stay with respect to real property located in Reno, Nevada.

Neither the debtor nor the trustee have filed written opposition within 15 days after service of the motion as required by Local Bankruptcy Rule 9014(d)(1). This is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo),

1 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the
2 above-mentioned parties in interest are entered and the matter
3 will be resolved without oral argument.

4 The motion will be granted pursuant to 11 U.S.C. § 362(d)(1)
5 to permit the movant to conduct a nonjudicial foreclosure sale
6 and to obtain possession of the subject property following sale.

7 The movant holds a claim secured by a deed of trust that
8 encumbers the debtor's real property. The plan, which identifies
9 the movant as Wells Fargo Bank, requires that the post-petition
10 note installments be paid directly to the movant by the debtor.
11 In breach of the plan, the debtor failed to pay approximately
12 three monthly installments to the movant. This is cause to
13 terminate the automatic stay. See Ellis v. Parr (In re Ellis),
14 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

15 The loan documentation contains an attorney's fee provision
16 and the movant is an over-secured creditor. The motion demands
17 payment of fees and costs. The court concludes that a similarly
18 situated creditor would have filed this motion. Under these
19 circumstances, the movant is entitled to recover reasonable fees
20 and costs incurred in connection with prosecuting this motion.
21 See 11 U.S.C. § 506(b). See also Kord Enterprises II v.
22 California Commerce Bank (In re Kord Enterprises II), 139 F.3d
23 684, 689 (9th Cir. 1998).

24 Therefore, the movant shall file and serve a separate motion
25 seeking an award of fees and costs. The motion for fees and
26 costs must be filed and served no later than 14 days after the
27 conclusion of the hearing on the underlying motion. If not filed
28 and served within this deadline, or if the movant does not intend

1 to seek fees and costs, the court denies all fees and costs. The
2 order granting the underlying motion shall provide that fees and
3 costs are denied. If denied, the movant and its agents are
4 barred in all events and circumstances, in connection with this
5 bankruptcy case or otherwise, from recovering any fees and costs
6 incurred in connection with the prosecution of the motion.

7 If a motion for fees and costs is filed, it shall be served
8 on the debtor, the debtor's attorney, the trustee, and the United
9 States Trustee. Any motion shall be supported by a declaration
10 explaining the work performed in connection with the motion, the
11 name of the person performing the services and a brief
12 description of that person's relevant professional background,
13 the amount of time billed for the work, the rate charged, and the
14 costs incurred. If fees or costs are being shared, split, or
15 otherwise paid to any person who is not a member, partner, or
16 regular associate of counsel of record for the movant, the
17 declaration shall identify those person(s) and disclose the terms
18 of the arrangement with them.

19 Alternatively, if the debtor will stipulate to an award of
20 fees and costs not to exceed \$750, the court will award such
21 amount. The stipulation of the debtor may be indicated by the
22 debtor's signature, or the debtor's attorney's signature, on the
23 order granting the motion and providing for an award of \$750.

24 The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be
25 waived.

26 Counsel for the movant shall lodge a conforming order.
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